

IN THE UNITED STATES DISTRICT COURT

1

FOR THE DISTRICT OF ALASKA

2

JOHN GILBERT,

3

Plaintiff,

4

vs.

5

APC NATCHIQ, INC.

6

Defendants.

7

Case No. 3:03-CV-00174-RRB

8

**DEPOSITION OF DOUGLAS L. SMITH**

9

**June 1, 2006**

10

**APPEARANCES:**

11

**FOR THE PLAINTIFF:**

12

**MR. KENNETH L. COVELL**

13

Attorney at Law

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**FOR THE DEFENDANTS:**

17

**MS. PATRICIA L. ZOBEL**

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Anchorage, Alaska 99501

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(907) 279-9574

**ALSO PRESENT:**

24

**MR. JOHN GILBERT**

25

\* \* \* \*

26

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*Anchorage, Alaska 99501*

*(907) 276-3876*

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Pursuant to Notice, the Deposition of DOUGLAS L. SMITH was taken on behalf of the Plaintiff before Cheri Tabor, Notary Public in and for the State of Alaska, and electronic reporter for Metro Court Reporting at the offices of DeLisio Moran Geraghty & Zobel, 943 West Sixth Avenue, Anchorage, Alaska, on the 1st day of June, 2006, commencing at the hour of 11:30 o'clock a.m.

\* \* \* \*

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1 P R O C E E D I N G S

2 (On record)

3 COURT REPORTER: We're on record. My name is  
4 Cherri Tabor, and I'm a court reporter for Metro Court  
5 Reporting in Anchorage, Alaska. Today's date is June 1, 2006,  
6 and the time is approximately 11:30 a.m. We're at the offices  
7 of DeLisio Moran Geraghty & Zobel, PC, 943 West Sixth Avenue,  
8 Anchorage, Alaska 99501 for the deposition of Doug Smith.  
9 This case is in the United States District Court for the  
10 District of Alaska, in the matter of Gilbert, versus APC, Case  
11 Number 3:03-CV-00174 (RBR).

12 Sir, Mr. Smith, would you please raise your right hand  
13 so I could swear you in?

14 (Oath administered)

15 MR. SMITH: I do.

16 DOUGLAS L. SMITH

17 Having first been duly sworn under oath, testified as follows:

18 COURT REPORTER: Thank you. Would you please  
19 state your full name and spell your last for the record.

20 Douglas Lee Smith, S-M-I-T-H.

21 COURT REPORTER: May I have a mailing address.  
22 3900 C Street, Suite 701, Anchorage, Alaska 99503.

23 COURT REPORTER: Thank you. I also need a  
24 daytime or a message telephone number.

25 907-339-6331.

COURT REPORTER: Okay. Counsel, would you

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please identify yourselves and who you represent?

2 MR. COVELL: Kenneth Covell for John Gilbert.

3 MS. ZOBEL: Patricia Zobel for APC Natchiq.

4 COURT REPORTER: Sir, would you like to  
5 identify yourself?

6 MR. GILBERT: I'm John Gilbert.

7 COURT REPORTER: Thank you. All right. You  
8 may proceed.

9 MR. COVELL: All right.

10 **DIRECT EXAMINATION**

**BY MR. COVELL:**

Q2 Good morning, Mr. Smith.

A3 Good morning.

Q4 Have you ever been deposed before?

A5 A few times.

Q6 Okay. And what was that in regard to?

A7 Just prior case log with injury claims, general  
18 liability claims at Veco Corporation.

Q9 Okay. All right. Just briefly then, if you don't  
20 understand a question, say so. If you need to take a  
21 break, say so. It's informal in a way. It's all  
22 being tape recorded. You're under oath. You have  
23 your counsel here, you can talk to her if you want to.

24 Okay?

A5 I understand.

Q All right. What's your current position?

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A I'm the HSET director for ASRC Entities Services,  
2 that's the parent company of operations and  
3 maintenance division which was previously known as  
4 APC.

Q Okay.

A So there's been some name changes in the corporation,  
7 and I work at the corporate level, which is the parent  
8 of that entity.

Q Okay. And back in 2001 through 2003 when Mr. Gilbert  
10 worked for APC or Natchiq, you were at Kuparuk, is  
11 that.....

A2 That's correct.

Q3 .....where you were.....

A4 I was an APC employee at Kuparuk in the position of  
15 HSE manager for that department.

Q6 Okay. Is my general understanding correct that you  
17 move up a notch.....

A8 Yes.

Q9 .....or a position in the organizational chart?

A0 That's how they would have me believe it, so, yes.

Q1 Okay. All right. I.....

A2 Yeah, that's correct.

Q3 All right. At a time Mr. Gilbert worked at Kuparuk,  
24 is it correct that the general organizational scheme  
25 in the way of hierarchy in health and safety would be  
there are safety specialists, safety supervisor, and

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1           then you, and you title at that time, tell me again,  
2           was safety.....

A           I was hired as a safety manager which was a new  
4           position for that organization.

Q           Okay. I see.

A           That -- that position did not exist prior to my  
7           arrival.

Q           Okay. Prior to your arrival, was there a corporate  
9           safety man in Anchorage?

A10          There was a safety supervisor on site.

Q11          Okay.

A12          And that was Ron Kirk.

Q13          Okay. And then who would Ron -- who was Ron's direct  
14          report I think is how you guys like to put it?

A15          Yeah, at that time Ron was a direct report to Gary  
16          Buchanan as the safety supervisor in the department.

17          And.....

Q18          And was Gary.....

A19          .....the specialists.....

Q20          .....in Anchorage or was Gary.....

A21          Gary -- Gary was Anchorage-based.

22          (Telephone ringing)

Q23          Okay.

24                       MS. ZOBEL: Do you need to take a.....

A25          No, I'm just turning it off. Sorry.

                      MS. ZOBEL: Okay.

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A Gary was based on the Slope. He was the project  
2 manager or contract business manager for the Kuparuk  
3 contract. He was the operations manager.

Q Okay. And is that different than unit supervisor?

A Business unit manager, those guys have had a multitude  
6 of titles. We refer to them as the contract manager  
7 or business unit manager, and they were responsible  
8 for the entire operational contract for APC at  
9 Kuparuk.

Q So the safety supervisor would answer to Buchanan in  
11 the unit manager or similar position?

A Yes, prior to my arrival, Ron Kirk reported to Gary  
13 Buchanan.

Q And then was there a safety guy in Anchorage that was  
15 higher up the food chain or not?

A Yes, there was a corporate safety manager. At that  
17 time it was Scott Brower.

Q Okay. All right. Let's see, what did you do to  
19 prepare for your deposition today, if anything?

A Came yesterday and just, you know, knowledge of the  
21 events since I was present, but that's about it.

Q Okay. Did you ever do an evaluation of the safety  
23 specialist position to determine whether it was exempt  
24 or non-exempt from overtime?

A Yes. The -- in fact, I had been involved in an  
evaluation at a previous employer with that position.

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1 And after I arrived at this company, we discussed the  
2 position, exempt versus non-exempt. And one thing  
3 that's important is that one of the things we worked  
4 -- always worked against or was a bit of an issue is a  
5 lot of positions, can (indiscernible) extra hours in  
6 the specialist field around the country are being paid  
7 in an exempt mode, so by us defining those as non-  
8 exempt was -- we felt was correct with the  
9 determination of the labor law, but was not exactly  
10 industry standard. So we were always sort of with the  
11 uphill battle to move these two hourly, not within the  
12 company, but just as a general industry position. So  
13 we evaluated the positions based on the -- the  
14 Department of Labor checklist provided at the time,  
15 and determined that these positions would were -- most  
16 likely would be better suited to be under hourly  
17 positions. And the guys who were having call-outs in  
18 the evening and such, the nature of the embedded  
19 employees, were being called out, so there was a move  
20 to move them to hourly after I arrived there. But it  
21 took some time to change the contract language, put  
22 the rates in, and effect the changed for the  
23 specialists.

Q4 Okay. And did that then actually happen on or after  
25 April of '03?

A It happened March 1st of '03 is when we finally got

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1 the -- what we call employee information records, a  
2 status change actually into payroll and changed the  
3 specialist' pay rates to hourly was March 1 of '03.

Q And when did the guys in the field -- and we're  
4 talking safety.....

A Specialists.

Q .....supervisor here?

A Safety specialist.

Q Oh, okay. All right. Safety specialist. All right.

A And at the same time, we -- I evaluated personally  
10 with Gary Buchanan the position that Ron Kirk had  
11 previously held as safety supervisor. And it's  
12 important to understand the chain.....  
13

14 MS. ZOBEL: Let's.....

A .....of progression.

16 MS. ZOBEL: Let's wait until he asks the  
17 question.

A Yeah.

Q (By Mr. Covell) Okay.

A Yeah. Well, you were asking about which position  
20 we're talking about. The safety supervisor position  
21 was evaluated separate of the specialist. Only --  
22 only the specialists were changed March 1st. I just  
23 want to clarify that.  
24

Q Okay. Was the safety supervisor eventually changed?

A No, the position was eliminated.

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Q Okay. And what filled the void, if anything?

A There currently exists a position there now that's called a safety coordinator, and does not have a supervisory title. That is an hourly-based position.

Q Okay. And then your former job, does that still exist, safety manager, if that's.....

A It does.

Q .....the right -- okay. Okay. And when did the -- well, did the supervisor job go away contemporaneous with the coordinator job arriving?

A There was a void of -- of no position for several months prior to -- we had a staffing reduction, and the job was eliminated. Several months it was vacant before they recreated the coordinator position. That was after my departure.

Q Okay. All right. So to summarize this, and correct me if I'm putting it wrong, you and Mr. Buchanan at some point began a review of safety specialists, and as of March 1 of '03 recategorized it as non-exempt, in other words entitled to overtime is.....

A That's correct.

Q Okay. And then subsequent to that, or perhaps parallel, but somewhat in a latter phase, you evaluated safety supervisor, eliminated the position, there's a two-month gap between safety supervisor and safety coordinator, and created a safety coordinator

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1 position that was entitled to overtime?

A Well, I need to clarify a few points.

Q Sure.

A One, the safety supervisor position.....

MS. ZOBEL: That's fine. Go ahead.

A Yeah, there's a few points you made that are not  
7 correct.

MS. ZOBEL: Okay.

Q (By Mr. Covell) Okay.

A0 So a couple points of clarification. The safety  
11 supervisor position was evaluated in parallel to the  
12 specialist, whether it was exempt or non-exempt.

Q3 Okay.

A4 The supervisor position was eliminated as a force  
15 reduction.

Q6 Okay.

A7 A budget reduction, and was vacant for a number of  
18 months, and I couldn't tell you exactly how many  
19 unless I went and looked at records.

Q0 That's fine.

A1 But longer than -- longer than six months before we --  
22 that job was refilled as a coordinator role and made  
23 hourly.

Q4 Okay. Approximately when did the process of the  
25 review begin if as to safety specialist it ended March  
1, '03? You know, what it two months, six months, a

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1 year and a half?

A The review started in '02, and from many of the notes  
3 that you've already seen, it was being discussed  
4 as early as February of '02.

Q Okay. And which notes are you referring to?

A Some of the notes that were reviewed yesterday where  
7 John had related information to the specialist that  
8 the hourly rates were being reviewed.

Q Okay. And you saw those notes yesterday?

A I did.

Q Okay. Besides the ones yesterday, is there any  
12 written commemoration of your actions in conducting  
13 the review of the safety specialist and/or safety  
14 supervisor job for reclassification?

A I went to work there in December of '01, so they  
16 started immediately after my arrival. And the  
17 information was being disseminated down from my  
18 position to -- to John's position about the initiative  
19 to review and possibly change these to hourly.

20 MS. ZOBEL: I think what he's looking for is  
Q you have any records that.....

A Not that I've been.....

23 MS. ZOBEL: .....have not been produced?  
A .....able to locate, no.

Q (By Mr. Covell) Let me be as hopefully direct and  
clear as possible. What I envision is perhaps there's

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1 a file folder that says, review of safety specialist  
2 job for transfer from exempt to non-exempt, and there  
3 being, you know, 2 or 10 or 50 papers in there.

4 None that I have been able to locate.

Q Okay. When you were doing this process, did you  
6 generate paperwork?

A No. And it was direct verbal conversation between  
8 myself and Gary Buchanan.

Q Okay. So is it fair to say other than what you've  
10 seen, you wouldn't expect there to be anything else in  
11 the way of paperwork?

A Not that I can personally locate, no.

Q Okay. All right. That was easy, right? Okay. And  
14 then prior to your arrival, are you aware of any  
15 review or clas -- or review for appropriateness of  
16 exempt or non-exempt classification of the safety  
17 supervisor position at APC?

A No.

Q Okay. You were at Kuparuk when the safety supervisor  
20 was there and classified as exempt, right?

A No, it was exempt -- -- when -- when I arrived at the  
22 position, the supervisory position was already being  
23 paid at a day rate which was filled by Ron Kirk.

Q Well, Mr. Gilbert was a safety supervisor, right?

A He became Ron Kirk's alternate.

Q Okay. All right. And when he was in that job, he was

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1 being classified and paid as an exempt employee,  
2 right?

3 A Yes, he went into the job, and the job was already  
4 established as an exempt position.

5 Q Okay. And you were his boss then?

6 A That's correct.

7 Q Okay. All right. What different duties did the  
8 safety supervisor have when Mr. Gilbert was in that  
9 position versus a safety specialist?

10 A In my opinion and in my observation, an expectation of  
11 the job was that they were the coordinator of the  
12 specialist, and in that role provided, you know, a  
13 degree of oversight and direction to these embedded  
14 employees. And then in my absence -- I worked a four-  
15 day on, three-day off schedule, and in my absence from  
16 the Slope, they were the step-up for the department  
17 and fill the roll of HSE manager in my absence.

18 Q Okay. So they were the coordinator of the other  
19 specialists. These other specialists generally had --  
20 I don't know if duty stations is the right word, but  
21 generally had a routine set of work that they were  
22 going to do, or expect to do, is that right?

23 A That's correct.

24 Q Okay. So a guy would have wash bay, or light duty  
25 shop, or a pad or something to that effect?

A That's correct.

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Q Okay. Would the safety supervisor do safety specialist work routinely?

A Not routinely.

Q Okay. What safety specialist work would the safety supervisor do?

A Probably the same as I would do, and that would be a back-up for the field, if there be excess work, someone off shift, in training, geographically not available, because they're too far out to one site, so we might respond to a scenario on their behalf.

Q1 Okay.

A2 And that would include myself as well.

Q3 Okay. So when a safety supervisor acted as the coordinator or the specialist, I mean, what physically would he do that was coordinating them? Would he pick up the phone and call people? Would he call meetings? Would arrange their schedules? I mean, what types of things?

A9 Schedule coordination, personnel coming and going, trying to help work out vacation coverage by scheduling other people to work over, providing answers, you know, questions and answers both up the chain of command with the client, with our people who liaison, conduit of information flow.

Q5 Okay. And when you said answers questions, would that generally be to the client, to Conoco-Phillips or

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1       whoever was.....

A       Both sides, internal.....

Q       And what.....

A       .....and external.

Q       Internal to?

A       APC.

Q       APC upstairs. Was there a lot of questions that came  
8       from the specialists to the safety supervisor?

A       I think there was daily questions probably from each  
10       of them of some type, and they vary in technical  
11       nature. Some very simple and some technical.

Q       Okay. Well, if you know, would they be along the  
13       lines that, you know, I'm busy on this pad, can you  
14       come out and do this other test for me on the other  
15       pad, or would they be more of the nature of, you know,  
16       how do I run this meter? If you know.

A       I think that the majority of the questions were more  
18       technical in nature about how to execute on-the-job.  
19       We had varying levels of specialists with different  
20       levels of experience, and the supervisor was an  
21       experienced -- more experienced position that had more  
22       authoritative knowledge, technical knowledge, and was  
23       oftentimes a reference for the specialist to conduct  
24       business.

Q       Could you give me an example of what that kind of  
question would be?

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A Yeah. I'm on the pad and I don't clearly understand  
2 how to run this Ludlum meter, you know, can you help  
3 me out over the phone, or come out and show me? I'm  
4 running the snapshot, the gas chromatograph, I'm going  
5 to need some assistance with that. Policy, maybe some  
6 policy questions. What is our procedure or policy  
7 regarding a particular subject matter.

Q Okay. As to policy and procedure, that was all in a  
9 book which sounded like it was going under a never-  
10 ending revision. Is that fair to say?

A1 There was a policy and procedure manual being revised,  
12 that's fair to say.

Q3 Okay. And policy and procedures would or ought to be  
14 or hopefully were in there?

A5 Not totally encompassing. A lot of our job requires,  
16 you know, thought and technical background to derive  
17 answers, and not everything is written down for us.

Q8 What does the safety coordinator position of today do  
19 differently than the safety specialist position of  
20 yesterday?

21 MS. ZOBEL: Safety specialist or.....

22 MR. COVELL: I'm sorry. Thank you. Thank  
23 you.

Q4 (By Mr. Covell) Safety supervisor position.

A5 They have more hands-on assignments. They are ask --  
asked to actually be solely responsible for, for

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1 example, all UA collections. We no longer use a third  
2 party as we were at the time. They've got a lot more  
3 duties that are routine, nonsupervisory, non-directing  
4 role.

Q What directing actions did the safety supervisor do?

A It was within their scope of authority to redirect  
6 resources. For example, if we had a job that day that  
7 needed extra assistance from one of their specialists,  
8 they would have the authority to ask for and redirect  
9 people to assist and coordinate when we had the  
10 abnormal conditions.  
11

Q2 Okay. But do you know if the safety supervisor ever  
13 actually directed somebody to, say, get off that pad  
14 and go to this one?

A5 Yes.

Q6 And who, what, when, where, why and how? Can you tell  
17 me?

A8 No. I had, of course, my scope of activity and the  
19 supervisor had their scope.

Q0 Right.

A1 So the only way for me to quantify how much directing  
22 took place was to speak specialists that were employed  
23 then, that are still employed now and gauge what their  
24 perception was of the supervisor's positions and how  
25 much direction they felt they received from that role.

Q Uh-huh.

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A And that's how I derive my opinion that there was  
2 quite a bit of directing or coordinating that went on  
3 from that position, as I expected it to.

Q Okay. Well, let me.....

A And in my absence, it was the sole managerial position  
6 left on the site.

Q Let me sort of work on the coordinating versus  
8 directing issue here for a little bit. I mean, -- and  
9 I'm asking for examples, I'm not suggesting this  
10 happened, but, for instance, were ever in the office  
11 with Mr. Gilbert or Mr. Kirk, and you hear them on the  
12 phone saying, safety special Smith, you leave pad 19  
13 and you go to pad 20 now and perform hot work permit?

A4 In the back of my mind I want to say, yes, I've heard  
15 those conversations, but I could not give you exactly  
16 who, what, when, where at this late stage of the.....

Q7 And to that same type of situation, have you had a  
18 safety specialist come to you and say, yesterday Mr.  
19 Kirk called me and said I have to go from pad 19 to  
20 pad 20, and do a hot -- and explain that to you or  
21 complain about it or whatever they might communicate  
22 about it?

A3 No, I can't recall that exact line of communication,  
24 and I don't think it would have been something I would  
25 have normally heard.

Q Okay. If this is coordinating the work, is that more

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1 of a collegial or peer coordination type of thing  
2 where the men go to work in the morning and say, okay,  
3 here are the jobs. We've got this extra job here to  
4 do today, because this is a special project or  
5 something, how are we going to divide this up, and  
6 they sort of put their input in and share and decide  
7 who can do which and what, and get it covered that  
8 way, versus the boss man coming in and say, you go  
9 here today, you go here today and you go there today?

10 If you can say.

A1 It was certainly not a democracy. And in my position,  
12 I looked to the supervisor to be the second in  
13 command, and they had authoritative capability to  
14 direct work and -- but in these embedded employees,  
15 you need to understand what they're doing that day,  
16 what their priorities are before you make a decision  
17 who's best available to be redirected. So even though  
18 there would be conversation, it was not up for a vote  
19 who wanted to go do which activity.

Q20 Okay. Did you ever confer with Mr. Gilbert when you  
21 were considering reclassifying the safety supervisor  
22 job or eliminating it as the case may be, as to what  
23 he did on a day-to-day basis?

A24 I don't think John and I sat down and went through any  
25 specific classification question and answer of his  
position.

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Q Okay. Giving examples to the extent you possibly can,  
can you tell me what you understood he did on a day-  
to-day basis?

A Yeah. I think my understanding of his job duties was  
to be a second tier supervisor in the department, help  
us, you know, formulate a better department, and  
provide, you know, direction and oversight and growth  
in the department from procedure writing to employee  
development.

Q Okay. But like if you can give it to me by task, so  
say on a typical day I would expect he would go and  
conduct a meeting for the first hour, go out and do a  
hot space entry permit, come back for an hour, or come  
back, work two hours on PP&G revision, maybe eat, you  
know, then routine at 1:30 you have to go out to pad  
so and so or go supervise somebody at pad so and so  
for about an hour, you know, and like that. Can you  
break it down like that for me?

A I cannot, and the only reason not is because our days  
were never typical. They were very untypical, and we  
responded to the needs as they arose, but on a  
typical, uninterrupted day.....

Q On a typical untypical day?

A .....you would focus on -- a great deal of the time we  
were spending the time on policy/procedure  
development, be a resource to both the client and our

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1 other department staff on direction, questions,  
2 answers, supporting them in a way to complete their  
3 activities. And what we had is a lot of -- the nature  
4 of our business is the unplanned events take place and  
5 then you get engaged in those. There might be an  
6 incident -- might be a lead -- a lead issue, or a  
7 number of things.

Q Sure. You might have to go out and investigate an  
9 accident, you might have a lead meter go out somewhere  
10 I take it or --

A1 You may have a question on where you remove some  
12 paint, how much area do I need to pull, who's going to  
13 coordinate the sampling at the lab, and, you know, so  
14 -- and those functions came up quite frequently.

Q5 Okay. And of those duties you just described in that  
16 answer to that last question, how many of those  
17 duties, if any, are different from the duties a safety  
18 specialist would have performed?

A9 The specialist -- let's take lead for example, lead  
20 paint. His job might have been to identify that we're  
21 going to do some paint removal somewhere, and it could  
22 have lead in it. His job may be to work with someone  
23 to remove the paint product, and then get it into the  
24 department for disposition and review. We -- John's  
25 position oftentimes, the supervisor position, would  
help coordinate the disposition of that lead-potential

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1 pain to a lab, receive results, interpret those  
2 results, and determine if we had an issue with lead.  
Q Okay. So the guy in the field might get the paint  
4 samples, bring them into John; John might mail them  
5 off to the lab in Colorado, which is one of the ones  
6 you used I think and then Colorado might send them  
7 back and say, here's your level, is that.....

A That's correct. And based on the level,  
9 interpreting [sic] that data, we would say, we need  
10 to be in respirators or not, and provide that  
11 direction back to the field and send them on their  
12 way.

Q3 Okay. And when you get the -- is it correct that when  
14 you get the test result from Colorado of parts per  
15 million or whatever it is, there's some manual that  
16 dictates whether or not if the test result is in a  
17 certain range, you -- I don't know if you classify  
18 them as level 1 remediation, 2, 3, but whether or not  
19 it's respirators or suits or, you know, wash downs or  
20 whatever the appropriate treatment is?

A1 Yeah, there's a lead standard from OSHA that we go by.

Q2 Okay. Okay. All right. So then the coor -- or the  
23 supervisor might look in the manual and say, okay, we  
24 have a level 19, therefore you need to use procedure 3  
25 kind of thing?

A In context, that's correct. Yes.

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Q Okay. All right. Okay. And might also a safety specialist make those same kinds of -- or might not also a safety specialist do that same work vis-a-vis looking at the sample and deciding what type of remediation procedure was necessary?

A Not usually, because we tended to want to have oversight of those kind of exposure levels from this -- from the supervisory positions to ensure we were in compliance.

Q Okay. Did specialists fill the supervisory role when there was no safety supervisor on a hitch?

A If there was an absence from any position, the next most qualified person was stepped up to that role as a fill-in if we had available personnel. But when they went to the new role, they assumed those duties and responsibilities, and it was a temporary step up.

Q Okay. And when that happened, did they get a letter saying you're -- for these two weeks, you're temporarily supervisor or not?

A Email transmission to indicate to the staff who was in what position so they would know whom to call.

Q Okay. Did anything go into their personnel folder in that regard, if you know?

A No.

Q Did they get more money?

A Not if it was temporary assignment.

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Q Okay. Okay. As far as -- and this dovetails nicely.

2 As far as your comments regarding Mr. Gilbert filling  
3 in -- well, okay. Let's not go there yet. Did Mr.  
4 Gilbert ever have the authority to hire and fire  
5 people?

A He never had to fire anyone, but I would say that not  
7 -- not by himself as nor did I as the manager. It  
8 would have taken consultation with HR and Gary  
9 Buchanan as the business unit manager to actually  
10 terminate employees.

Q1 Okay. So if there's a piece of paper terminating a  
12 guy, would Gary Buchanan be the guy who signed it?

A3 He would -- yes, and the one termination I was  
14 involved with early on in the -- my tenure there, it  
15 required Gary's signature and HR approval to process  
16 it.

Q7 Okay. And then is the converse true as to hiring,  
18 that Gary would sign it, and HR would.....

A9 That's correct.

Q0 .....approve it? Okay. All right. So position-wise  
21 in the organizational chart, he's two steps away from  
22 Gary?

A3 That's correct.

Q4 Okay. When he stepped up as you put it to the HSE  
25 position -- that was your job, is that right?

A No. HSE manager.

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Q HSE manager. He would get an email then saying you're  
2 HSE manager for this time frame?

A Because I was on a standing four and three rotation I  
4 was there Monday through Thursday.

Q Uh-huh.

A Anytime I was absent, it was a standing order that  
7 they were the next step up in point of contact for my  
8 position.

Q Okay. And what additional authority would he have to  
10 exercise in that position?

A1 That position as a step-up into my absence has the  
12 same authority as I have in the position with a degree  
13 of consultation by phone on any significant matters.  
14 But if un -- if unreachable, that position has the  
15 full -- the full authority.

Q6 And when you say consultation by phone, you mean that  
17 Mr. Gilbert in the HSE -- acting HSE manager position  
18 would call you and consult with you?

A9 Not on every decision, but if we had a significant  
20 incident, we have a company policy of notification to  
21 the next level, and I would always get notified of a  
22 major event in my absence as I would if I was in town  
23 for a meeting, I would get called. Or if I was  
24 actually on my R and R days, I would be called, so --

Q5 This job follows you around whether you're off or not?

A And it's just a matter of company reporting policy.

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1 It's not a matter of asking permission to proceed.

2 It's a matter of notification.

Q And what kind of issues might you get a phone call  
4 about when you were on R and R?

A Company policy required notification up the chain of  
6 command for a lost time accident.

Q Okay.

A Significant spills.

Q Okay.

A That's always in our policy requirements is  
11 notification on incidents.

Q What kind of decisions might Mr. Gilbert have made as  
13 HSE acting manager that he wouldn't have called you  
14 about, and he wouldn't have made as safety supervisor?

A More -- I think more of it's decisions that might have  
16 been discussed or progressed and staff meetings that I  
17 would normally been the primary attendee that in my  
18 stead Ron or John would have attended. We had a  
19 senior staff meeting that they would attend in my  
20 absence, and there was always progress on action items  
21 that would need to be relayed or discussed, or some  
22 degree of decisionmaking took place in my absence that  
23 normally I would have been the primary attendee to  
24 those meetings and been involved with those decisions.

Q Okay. So they'd go to these meetings. They'd  
disseminate that information, and it's a little

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1       unclear about the decisionmaking. Are you saying  
2       decision making within this sphere of those meetings,  
3       and the issues that are being discussed there, or do  
4       you mean independent of that?

5       A     The most -- most frequently decisions would have had  
6       to have been made to keep things progressed, like at  
7       those meetings, and also if other issues came up, I  
8       can't think of one specifically, but it could have  
9       been an HR-related matter, could have been someone  
10      needing additional time off, shift change, problems  
11      with someone's performance in the field of a given day  
12      that needed to be addressed or other managerial  
13      matters that I would have normally maybe been -- been  
14      addressing.

15      Q     Okay. Well, for instance, I think yesterday we heard  
16      about apparently the administrative staff, Kim and  
17      somebody else, seemed to be going at it as it were.  
18      Is that a situation that you eventually dealt with and  
19      got resolved?

20      A     Initially it was dealt with by Ron Kirk, which John's  
21      alternate.

22      Q     Uh-hum.

23      A     And the resolution that he came up with wasn't  
24      satisfying to the two people that had issues, so we --  
25      it eventually made it to me, and we took a different  
    action.

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Q And was that letting one of them go or.....

A Actually, no, we had a discussion of working more collaboratively together and fixing some problems. Eventually there was a reduction in force that eliminated one of those positions, but it was not associated with this performance issue.

Q Okay. All right. And so as far as specific examples of what a safety supervisor, or Mr. Gilbert might have done as safety supervisor, outside of what we've already discussed, do you have any other examples you can give me?

A If I was on shift, I would normally have been the facilitator on some of the safety meetings. And in my absence, I expected those to continue to be held, and the facilitator role of that fell to the supervisory position.

Q Okay. If there was a -- and I don't know if this happened or not, and you can comment in that regard, but if there was a time when you're not there, and there's no safety supervisor there, then would a safety specialist be the facilitator for the meeting?

A Only if they're stepped up into that supervisory role.

Q Okay. When Mr. Gilbert was a safety specialist, do you know if he ever was stepped up into safety supervisor?

A Not during my tenure, no.

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Q Okay. Had he been, would he have received an email in  
2 that regard?

A There should have been an email designating who was  
4 assuming the role of supervisor or manager in their  
5 absence.

Q Okay. And who -- I would assume that when you're HSE  
7 manager and you're gone, you're saying you didn't send  
8 an email, because that was a routine thing, right?

A Between my position as manager and the supervisor  
10 position, it was an on-going basis of my schedule that  
11 required them to be stepped up in my absence, so there  
12 was not an email, but on the vacation coverage or  
13 other unscheduled coverage issues, if someone was  
14 stepped up, the person departing, supervisor or  
15 manager, would put out an email who was going to be  
16 their step up and their points of contact.

Q Okay. So it would either come from you or the safety  
18 supervisor.....

A Yes.

Q .....that -- the email?

A That's correct.

Q Okay. All right. Is it right or wrong that the  
23 safety -- well, let me just ask it this way. You have  
24 -- and you have had safety specialists, safety  
25 supervisor, and safety coordinator -- is that the name  
of the coordinator job?

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A The new position is called a safety coordinator.

Q Okay. What activities are co-extensive to all those positions, if any?

A Ones that bridge all those positions?

Q Yeah. In other words, what jobs, what tasks do each one of those guys do that are the, you know, if you do -- for instance, does each one of those jobs do hot work permits?

A We're talking routine tasks or what tasks you may do?

Q Well -- yeah. Well, let's start with may. Do each one of those jobs do hot work permits?

A Any of our positions may do a hot work permit.

Q Okay. And each one -- okay. And the same as to confined space entry?

A That's correct.

Q Okay. The same as to walk-downs or audits?

A That's correct.

Q The same as to PP&G revision and update?

A No.

Q Okay. Who would or wouldn't be doing that?

A The specialist may have input into the language of a particular policy or procedure but final authority over the final content and for regulatory compliance and final approval would come from a higher authority, supervisor or manager's position.

Q Okay. Did the supervisors routinely sign off on the

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1 revised PP&G?

A There is not a particular sign-off location on any of  
3 those policies.

Q If there's a new P -- a newer, revised PP&G, wouldn't  
5 that be something that's passed by you and got your  
6 approval in one form or another?

A Ultimately it would have to go to corporate for  
8 approval.

Q Okay. All right. Besides those tasks I mentioned to  
10 my recollection and thinking, that comprises a large  
11 portion of what a safety specialist does, and I think  
12 you're telling me you don't -- or is that so?

A That's only a portion of what they do. Permitting is  
14 actually probably only 20 percent of their activity.

Q Okay. So beyond that -- well, there's permitting and  
16 auditing -- okay. What else would you expect the  
17 safety specialist to be doing?

A From an auditing perspective, that does cover the  
19 field presence of going out and being visible to  
20 employees, looking for compliance, coaching of  
21 employees in safe practices, just insuring that people  
22 are working in a safe manner, is a larger portion of  
23 their day, being visible and present for a resource to  
24 those field employees.

Q Okay. And what else, if anything?

A They would complete required paperwork associated with

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1 injuries, to include worker's comp forms, incident  
2 reports. They may be an attendee or a participant in  
3 an investigation committee or team.

Q Okay. Anything else?

A They would provide assistance with UA collections when  
6 they were being done post accident or reasonable  
7 cause, suspicion test.

Q Okay. All right. And then that's the list?

A That's pretty much it.

Q0 All right of those additional activities we just  
11 talked about, are any of those activities something a  
12 safety supervisor would not do?

A3 They would not do those routinely, but the manager and  
14 the supervisor may be required to do those  
15 occasionally.

Q6 Okay. And then of all those things we talked about,  
17 are any of those things the safety -- you -- a safety  
18 coordinator would not do?

A9 The safety coordinator position as it currently exists  
20 does not routinely engage in the permitting process.  
21 they are more focused on special projects, the drug  
22 and alcohol program administration, and they have been  
23 used to take on duties to alleviate some of the daily  
24 duties from a specialist to allow them to concentrate  
25 more on auditing and field presence.

Q And when you say daily duties, what's contained in

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1 that?

A Paperwork. For instance, now if there is an incident,  
2 the injury paperwork is completed by someone other  
3 than the specialist, so that paperwork is now  
4 completed by the coordinator whereas in the past it  
5 was -- the paperwork kept out specialists in the  
6 office too much.

Q Okay. It sounds to me like this is a very paperwork  
7 intensive job, is that so? In other words, that.....  
8 There's a lot of forms to complete, and in the -- in  
9 the -- in an incident event. Daily -- daily their  
10 paperwork load is probably 15 or 20 percent of their  
11 activity in the coordinator role.

Q4 Okay.

A5 The rest of it, some hands-on activity. They may pro  
16 -- they provide respiratory fit tests. They provide  
17 hearing tests. They provide documentation and  
18 coordination of -- of post-offer medical reviews for  
19 people being hired. So there's a -- they have a  
20 different set of activities that they're conducting  
21 that are -- some are new for the coordinator role.  
22 Some were inherited from the specialist.

Q3 From the specialist or supervisor?

A4 From the specialist.

Q5 Okay.

A They no longer do any of the -- well, in my opinion,

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1       they no longer do the supervisory capacity. There's  
2       -- all -- we have now have a full-time supervisor, a  
3       manager on the position whereas where I did not have  
4       an alternate and worked four and three, when we went  
5       to a full-time manager's role, that second tier  
6       position was not as critical, because there's someone  
7       there all the time.

Q       Okay. Of those activities you said the coordinator  
9       does, are those activities that the safety supervisor  
10      would have done when Mr. Gilbert was in that job?

A1      Not routinely, but some of the activities could have  
12      been done by the safety supervisor position.

Q3      Okay.

A4      Just not as a routine duty expectation.

Q5      Okay. Well, Mr. Gilbert's represented that among the  
16      things he did as safety supervisor was that if a man  
17      was injured in the field, the field specialist would  
18      bring him in and sort of hand him off. He'd fill the  
19      paperwork out and make sure he got to the medic and on  
20      a plane if he needed to do that, that he would receive  
21      client calls on safety issues, that he would fill out  
22      paperwork, that he would coordinate coverage of safety  
23      specialists. Would you agree or disagree that he  
24      would do those duties routinely as safety supervisor?

A5      I would agree to those duties with an exception.

Q       Uh-hum.

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A The exception being that we did not have a centralized  
2 expectation of completion of injury paperwork at that  
3 position. We actually did have centralized injury  
4 paperwork completion for a period of time happening in  
5 a different position which was filed by two other  
6 employees, which was the trainer's position, and we  
7 eventually through reorganization moved that  
8 centralization back into the specialist role to  
9 complete their paperwork.

Q0 Okay. So a supervisor might have hands on the  
11 paperwork for a while and pass it back to the  
12 specialist, is -- am I understanding that right?

A3 We typically -- that position on line would have a  
14 review opportunity on completed paperwork.

Q5 Okay.

A6 And to help to determine if it was -- the OSHA  
17 reportability status of that event.

Q8 Let me hand you the exhibits from this morning's  
19 deposition, and we'll go off record. I'm going to ask  
20 you to look at them for a few minutes. I'm going to  
21 take a break. And then I'm just going to ask you if  
22 you're familiar with them or not. My expectation is  
23 you might not be. Okay. Thank you.

24 (Off record)

25 (On record)

COURT REPORTER: We're back on record at

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12:26.

Q (By Mr. Covell) You've had a chance to look at the  
exhibits that are I think -- those stickers have all  
B's, B-1 through 6 or something. Are any of those  
documents familiar to you?

A Not in their current context. The exhibit marked B-1  
has the attachment of the Alaska statutes regarding  
exempt versus non-exempt, and I am familiar with that  
documents, but not as an attachment to this document.

Q Okay. All right. And is that something you used when  
you did this review of the positions around March of  
2003?

MS. ZOBEL: I think it's 2002.

A 2002. And, no, the document I used is the -- was the  
federal question and answer guideline put out as a  
tool of evaluation. But I was aware of and had read  
this language prior to that.

Q In the context of doing the review of the positions in  
'02 or '03 -- '02 into '03?

A I did the review in 2002.

Q Okay. And am I correct that you either saw papers --  
those papers or ones like them, or at least were  
familiar with the concepts in those papers in doing  
that review?

A I was familiar only in the concept of the paper  
attached to exhibit B-1, which is the Alaska statutes.

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Q Okay. Great.

2 MR. COVELL: We're going to give those all  
back to Madam Clerk right now to keep those out of  
circulation.

5 COURT REPORTER: Uh-huh.

Q (By Mr. Covell) All right. Okay. In regard to --  
7 I'm going to go backwards just for a minute. In  
8 regard to taking -- Kuparuk is 40 miles or so from  
9 Prudhoe, is that right?

A Uh-huh. Approximately, yes.

Q Okay. So if a safety specialist or supervisor had to  
12 take an injured party to the medic, would they have to  
13 go all the way to Prudhoe for that?

A No.

Q Okay. Where would they go?

A Down the hallway to the clinic at Kuparuk.

Q Okay. Were there injuries or conditions that would  
18 require taking somebody to Prudhoe?

A Occasionally we would take someone to the clinic in --  
20 in Deadhorse.

Q Okay.

A Which is approximately 45 miles away, but it was a  
23 rare exception.

Q Okay. And then if somebody was going to fly out, do  
25 you get air service into Kuparuk, or do they fly out  
Prudhoe/Deadhorse?

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A We have both, but the primary air service was in and  
2 out of Kuparuk.

Q If somebody's injured and want to go home sooner, they  
4 might ride to Prudhoe and go home?

A There's a bus service that goes there daily to those  
6 flights that leave out of Prudhoe, and occasionally we  
7 as a company may have someone transport them.

Q Okay. And I would take it you're less likely to put  
9 an injured person on a bus and more likely to give  
10 them a ride obviously, depending on the degree of  
11 injury?

A2 Depending on the degree of injury and type, yes.

Q3 Sure. Okay. All right. As far as the emails that  
14 give people their step-ups, would you expect that Mr.  
15 Gilbert would have issued emails of that nature?

A6 If he was going to be absent without an alternate, and  
17 I was not assuming responsibilities for the management  
18 of the department, if in his absence and my absence,  
19 he was going to be gone, or Ron was going to be gone,  
20 they like everyone else would need to identify someone  
21 to step up in their position.

Q2 Let's say he was going to be gone, but you were going  
23 to be there, then would he be expected to sending an  
24 email?

A5 No, John and I did not as a routine basis transfer  
emails back and forth about the two of us being --

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1 covering for one another unless we were both going to  
2 be gone, because we were kind of in a standing mode of  
3 -- of department leads in the absence of one or the  
4 other.

Q Okay. In -- let's see. What's your background,  
6 education and training?

A I have 10 years in the military, military courses  
8 associated with safety and QC. I have an associate's  
9 degree from University of Alaska, and on-going  
10 education, safety-related education and a CSP.

Q1 Okay. You indicated that you'd done evaluations of  
12 the safety specialist position at another employer?

A3 Not the specialist position in particular. We had  
14 actually an issue with hourly involving quality  
15 assurance personnel.

Q6 And was that at Veco or.....

A7 It was at a prior employer.

Q8 Who might that have been?

19 MS. ZOBEL: Is it relevant?

20 MR. COVELL: Sure.

A1 Can I say?

22 MS. ZOBEL: Yeah, you can say.

A3 Yeah, Veco.

Q4 (By Mr. Covell) Okay. All right.

A5 It's a case -- there's case law about that.

Q And you evaluated -- and that was evaluating quality

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1 control people for overtime?

A It -- it was, and as a correlation to the evaluation  
2 of the quality control positions, we decided that  
3 there was enough similarities in the safety specialist  
4 positions to change them at the same time.  
5

Q Okay. And what was your role in doing that  
6 evaluation?  
7

A At the time.....  
8

9 MS. ZOBEL: At Veco?

10 MR. COVELL: Yeah.

A1 At the time at Veco, I was the HSE manager in Prudhoe,  
12 and we had a number of specialists that worked in our  
13 department.

Q4 Okay. And you made the decision to change it from  
15 exempt to non-exempt, is that right?

A6 The company -- at the time Veco made the decision  
17 above me to -- to change the hourly. We had employees  
18 working at different contracts, and some were day  
19 rates, some were already hourly, so we went -- went a  
20 consistent hourly rate for specialists.

Q1 Okay. Did you do the analysis on those checklists or  
22 tests at.....

A3 The analysis were -- was performed, and I was a  
24 participant in answering questions from the analysis.

Q5 All right. So is it correct to understand that they  
said, Mr. Smith, what do these guys actually do kind

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1 of type questions?

A That's correct.

Q Okay. All right. And you gave that input and they  
4 did the analysis and made the decision, is.....

A Yeah.

Q .....that fair?

A Yes, corporate HR and counsel made the review and  
8 final determination.

Q Okay. All right. And the process you did at APC  
10 contrary to what you did at Veco, was you did the  
11 entire process, is that right or wrong?

A I did not do the entire process. My personal  
13 involvement was arriving on site and inheriting a  
14 department that had specialists working at day rates,  
15 and bringing that to the attention of my manager that  
16 we should probably review that.

Q Okay. And it's because you did it at the last place,  
18 and you said, gee, maybe we should at this here?

A There was definitely an anomaly between the two and  
20 thought we should be consistent.

Q Okay. All right. And then when you did the review  
22 with APC, did you serve in the same role where they  
23 were saying, Mr. Smith, what are these guys doing, or  
24 did you do the whole thing? Did you make the  
25 evaluation, do the analysis with or without the  
assistance say of Mr. Boyle?

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A At the time, my input was much shorter and more  
2 direct. It was to Mr. Buchanan that based on prior  
3 knowledge that I had become aware of these positions  
4 should be probably moved to hourly positions.

Q Okay. And then -- I'm just trying to understand how  
6 this all went mechanically so to speak, and then did  
7 Mr. Buchanan come back and say, yeah, you're right,  
8 we're changing them, or did -- I thought you said you  
9 sat down and did the check list or something?

A10 We -- I did with Gary so he would understand why I  
11 felt the way I did. I took him through the process  
12 very shortly, in the matter of an hour, what we spent  
13 weeks on at my prior employer.

Q14 Okay. Because you changed the brake shoes once and it  
15 took 10 hours, and you changed brake shoes this time,  
16 and it only took an hour?

A17 That's correct.

Q18 Okay. Okay. All right. And so you learned from the  
19 Veco experience how to do the -- this analysis, and  
20 you participated greatly in it the second time, is  
21 that fair?

A22 I would say that my participation the second time was  
23 much shorter than the first time, and that it was more  
24 of an informing my new employer what I felt about  
25 these positions' compensation.

Q Okay. All right. And they went along with you?

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A There's a process to make the change.

Q Okay. Tell me about that?

A Okay. This change is dependent upon a contract change. Our contract did not have hourly rates for these positions in the context of our contract with ConocoPhillips.

Q All right. Okay.

A Our contract re -- would require amendment and development of rates to make this change. The amendment process and the rate development process took quite a bit of time.

Q Okay. All right. Was counsel involved in the decisionmaking, if you know?

A Not to my knowledge.

Q Okay. Is it correct for me to understand that basically you and Mr. Buchanan got together, knocked heads and reached that conclusion? That.....

A I don't think that conclusion was reached as a basis of our discussion, but I'm not sure what discussions took place after that.

Q All right. So you don't know what happened up the food chain from that?

A I -- I actually don't know, no,

Q Okay. All right. Okay. In the course -- okay.

25 Besides doing the Veco thing with exempt and this instance, have you had other occasion to deal with the

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1 exempt/non-exempt issue?

A Yes.

Q Okay. Can you -- lots of times or a few times?

A Just a few times.

Q Can you tell -- just tell me what each one was for starters?

A We evaluated a position, a safety position that we placed at Fort Greeley under a government contract that had -- it was a single position that operated as a member of management with oversight of subcontractors, but also had some of the specialist type activities in their daily routine. So we had to evaluate what type of position that was and make a determination.

Q5 Okay. And when was that?

A6 That was done in 2004.

Q7 Okay. And what did you decide to do, or what was your conclusion?

A9 Hmm?

20 MS. ZOBEL: Yeah. You can tell.

A1 We decided that position was exempt hourly, and it was compensable for all hours worked, and was placed on that contract in that way, and it was within the terms of our contract with the government.

Q5 And why did you decide it was exempt hourly?

A Just based on the percentage and mix of duties that

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1 the position was required to perform.

Q Okay. And did you look at the 20 percent test as to  
3 whether or.....

A Yes.

Q .....not that -- okay. And how did you decide what  
6 percentage of the time was -- was going to be spent on  
7 non-exempt duties?

A Looked at all the routine duties that may be focus of  
9 that position, determined they were less than 20  
10 percent, but that the position was going to be  
11 required to work some weekend time, potentially be  
12 called out. Some kind of an on-call position of  
13 management and it could be seen as getting a lot of  
14 after-hours interruptions.

Q5 Okay.

A6 And we wanted to make sure that they were compensated  
17 for time spent after the normal duty day.

Q8 Okay. All right. And so then that position would get  
19 paid for -- let's say they had a routine -- would it  
20 have a routine 12-hour day?

A1 They were working 6-10's was a routine there at that  
22 government contract.

Q3 So then if a guy worked 12 hours, he'd get two more  
24 hours of straight time pay, right?

A5 That's correct.

Q Okay. All right. So there's that one. What other

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1 ones did you do?

A Let me think for a second here. We evaluated a couple  
3 of offshore safety positions in the Gulf that we were  
4 asked to fill. And the.....

Q Of Mexico?

A Yes.

Q Okay.

A And we have operations from out of New Iberia, and  
9 they were client representative positions, and  
10 initially were recommended or wanted to be compensated  
11 by the client on a day rate, and we looked at what  
12 their re -- their tasks were and decided that they  
13 were doing a lot of routine specialist type functions,  
14 and we supplied them only under agreement that they  
15 would be paid hourly with overtime.

Q6 Okay. Okay. Coming back to the Fort Greeley job,  
17 you're familiar with the issue of paying certain  
18 positions a -- paying them for all hours worked, is  
19 that so?

A20 I'm not an expert, but I -- every time I look at the  
21 documents, I try to digest them properly.

Q2 Every time you do this, you learn more and more,  
23 right?

A4 Yes.

Q5 Okay. All right. Are you aware of APC within the  
context of safety specialists working on the North

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1 Slope or at Kuparuk or possibly Prudhoe Bay if you've  
2 got people there, ever compensating any employee in  
3 that similar manner, i.e., that they would be  
4 compensated for all hours worked, even if they were  
5 exempt?

A I'm not aware of any positions that were exempt hourly  
7 positions.

Q Vis-a-vis the safety supervisor position, why wouldn't  
9 a safety supervisor be entitled to be paid for all  
10 hours worked in excess of their normal shift in this  
11 -- particular if they're called out or something, just  
12 like the Greeley position?

A3 In my opinion, the Greeley position was one deep with  
14 no supervisory or directing responsibilities. There  
15 was no one reporting in an organization to that  
16 position.

Q7 Let me stop you. What does one deep mean? I.....

A8 One person, no other -- they were only -- there was  
19 only one person in the safety department at Fort  
20 Greeley versus having a department of personnel to  
21 direct and administrate over.

Q2 Okay.

A3 So my interpretation and looking at the positions, the  
24 differential is the supervisor position in Kuparuk was  
25 in the chain of command over a department, and it  
provided administrative oversight and was a step up

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1 for the manager position and a member of the senior  
2 management team in my absence, so they were very  
3 different in nature from my opinion.

Q And so because of that then, they wouldn't be entitled  
5 to be paid for every hour worked without the overtime  
6 premium?

A More based on my interpretation of the -- kind of the  
8 80/20 rule of how much percentage of time that  
9 position would routinely perform duties that would  
10 fall into a non-exempt category.

Q1 Okay. So the reason why the safety supervisor  
12 wouldn't get paid for every hour worked was because in  
13 your opinion they weren't spending 20 percent of their  
14 time doing non-exempt work?

A5 That's the largest component with the additional  
16 component being that I viewed them to be more  
17 supervisory in nature because of the department  
18 configuration of the organization.

Q9 Okay. I think you've already told us you're not aware  
20 of Carr's letter.

21 MR. COVELL: But let's go ahead and get that,  
Madame Clerk, out of the B exhibits.

23 MS. ZOBEL: I'm going to object to questions  
in which you're asking him to draw legal conclusions with  
regard to these payments. I think that's for the court to  
decide in this case.

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1 MR. COVELL: Okay. That's fine. Objection's  
2 noted.

3 COURT REPORTER: So the last two look like the  
4 Randy Carr letters.

5 MR. COVELL: Okay. Thank you.

6 COURT REPORTER: You're welcome.

7 MR. COVELL: I'm just taking 6 here, I'm  
8 giving you the rest back.

9 COURT REPORTER: Very good.

10 A Do you have a copy of it?

11 Q (By Mr. Covell) Yeah, I'm going to.....

12 MS. ZOBEL: He's going to.....

13 Q .....give you this one.

14 MS. ZOBEL: .....give you that.

15 Q You already looked at this. And I believe you  
16 indicated you're not familiar with it, but -- and I'm  
17 not suggesting one way or the other that you are or  
18 you aren't, but just looking at it again, is that --  
19 that letter is not familiar to you, is that correct?  
20 A That's correct.

21 Q Okay. Would you look at the last page of the  
22 document, and go ahead and read the second and third  
23 to last paragraphs.

24 MS. ZOBEL: I'd ask that he read the third,  
25 fourth and fifth -- the -- starting at the top of the page.

MR. COVELL: That's fine with me.

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Q (By Mr. Covell) All right. I guess now that we've  
2 got you reading, why don't you go ahead.....

A Well.....

Q .....and read -- read aloud for us.....

A Yes. Would you like for me to start at exempt?

6 MS. ZOBEL: Why don't we -- we could go off  
the record and let him read it to himself.

A I don't mind reading it.

9 MS. ZOBEL: I mean, is there any reason that  
we need to have this.....

11 MR. COVELL: That's fine. Go ahead.

12 MS. ZOBEL: .....read into the record?

13 MR. COVELL: Let's go off record. Go ahead  
and read it.

15 (Off record)

16 (On record)

17 COURT REPORTER: We're back on record at  
18:47.

Q9 (By Mr. Covell) All right. Mr. Smith, you've been  
20 looking at the last two pages of what was marked this  
21 morning as B-6, and we're going to get that marked  
22 again for this deposition.

23 MS. ZOBEL: I think he looked at the last page  
24 B-6.

25 MR. COVELL: Okay. That's fine.

MS. ZOBEL: If you want him to read the first

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page, he can do that, too.

2 MR. COVELL: No, that's okay. In any event,  
we'll get that marked for this deposition, make it an exhibit  
to this deposition.

5 MS. ZOBEL: Just the last page, or the whole  
exhibit?

7 MR. COVELL: Might as well mark the whole  
exhibit for.....

9 MS. ZOBEL: That's fine.

10 MR. COVELL: .....continuity's sake.

11 MS. ZOBEL: Then let's let him review the  
whole exhibit.

13 MR. COVELL: Okay. Let's go off record then.

14 (Off record)

15 (Deposition Exhibit S-1 marked)

16 (On record)

17 COURT REPORTER: We're back on record at  
18:53.

Q9 (By Mr. Covell) Mr. Smith, you looked at this B-6  
20 which is now also D.....

21 MS. ZOBEL: S.

Q2 I'm sorry, S-1, right?

A3 That is correct.

Q4 Okay. And you read the whole document, and you also  
25 read that last page?

A That's correct.

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Q Okay. Is the direction that appears on the last page about paying an employee for all hours worked the type of guidance that you followed in deciding that the Fort Greeley position out to be paid for all hours worked?

A It was not the guidance that I was provided, and was not -- this -- this is the first time I've seen this document, and did not use this document or language of that particular type by Mr. Carr in making that evaluation.

Q1 Okay. But is it the same issue? In other words, you look at these positions and say, this person is exempt, but still needs to be paid for all hours worked?

A5 I think we solved the problem, but unfortunately I didn't use this as the issue to resolve the problem. I was not aware of this opinion. Because of the difficulty in determining this, based on what Mr. Carr states as needing to piece it together from statutes and prior rulings, our approach on that was -- the position at Fort Greeley was more based around the expectation, since that was a singular position, that it would likely be experiencing a lot of call-out time.

Q5 If somebody's exempt and they get a call out, from what you understand and what the rule is from doing

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1 the Greeley case, should they get paid for every hour  
2 worked?

A I believe they should if it's a routine expectation.

Q Okay. What if they routinely worked -- if their  
5 scheduled shift was 12 hours and they routinely worked  
6 in excess of 12 hours, should they expect to get paid  
7 for every hour worked?

8 MS. ZOBEL: Are you -- are you talking about  
in the context of people who are exempt under administrative/  
executive, or are you talking about under the supervisory?

11 MR. COVELL: Either.

A2 Could I get a definition of routine? What you would  
13 consider routinely working over.....

Q4 (By Mr. Covell) More than once.....

A5 .....the scheduled.....

Q6 .....more than once a week.

A7 I think if you were routine -- routinely working more  
18 than once a week, you would have to look at what are  
19 the tasks that time's being spent on. If those tasks  
20 do not fit within the exempt status, you would need to  
21 compensate those employees.

Q2 Okay. Should the safety supervisor position have been  
23 compensated for every hour worked under that standard  
24 if they worked in excess of 12 hours a day and were  
25 engaged in non-exempt duties?

MS. ZOBEL: I'm going to object to the extent

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it calls for a legal conclusion.

2 MR. COVELL: Thank you.

Q (By Mr. Covell) You can go ahead and answer.

A I -- when I did the -- my personal review of that  
4 position, I did not feel that that position engaged in  
5 duties and the overtime expectation of call-out and  
6 routine functions to be classified as non-exempt. So  
7 that job at that location with that title, no, I don't  
8 feel that position was a non-exempt position.

Q Okay. And I'm saying for the purposes of this  
10 question, it's a non-exempt position. Okay. Agreeing  
11 with you. And then saying, if they're.....

A Non -- let me rephrase that. I want to make sure that  
13 it was -- it was a -- it was not a non-exempt position  
14 of my opinion at that location at that time, that the  
15 duties involved and the hours expected to be on the  
16 job did not in my opinion make it a non-exempt  
17 position, that I felt like even with this letter of  
18 new information for me, I would not have made a  
19 suggestion to reclassify that job hourly at that time.  
Q And you're saying the safety special -- safety  
21 supervisor position in Kuparuk when Mr. Gilbert was  
22 there?  
23

A That's correct.

Q Okay. All right. And I'm saying for purposes of this  
25 questioning, assume that's so, assume that that safety

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1 specialist position is not entitled to overtime.

A The safety supervisor position.

Q Safety supervisor, thank you. They're exempt from  
4 overtime.

A Okay.

Q Okay. As your Greeley position is, right?

A It's exempt from overtime, but not exempt from all  
8 hours worked.

Q Okay. All right. So I'm saying they're both exempt  
10 from overtime, and I'm saying, shouldn't -- if the  
11 safety supervisor worked hours in excess of a 12-hour  
12 day, shouldn't they have been compensated for all  
13 hours worked, or in other words, got that additional  
14 straight time?

15 MS. ZOBEL: I'm going to jump in here, because  
16 I don't agree with your interpretation that you're following  
17 here. I think the question is whether or not you believe that  
18 he is exempt as an administrative, executive or professional  
19 employee, in which case he gets his salary, his salary only,  
20 and he doesn't get any extra hours paid. And you're trying to  
21 assume that even if he's exempt under those classifications,  
22 he still should get every hour paid. And I don't agree with  
23 that interpretation.

24 MR. COVELL: Okay. That's fine. And are you  
25 telling me that it's APC's position that the safety supervisor  
was exempt only as an administrative position?

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1 MS. ZOBEL: We're taking the position that he  
was exempt as an administrative position.

3 MR. COVELL: And.....

4 MS. ZOBEL: I agree with you that if the court  
were to find that he was a supervisor as is defined in this,  
that he would get compensated for the hours worked at straight  
time. But that's the basis for my objection, that this is an  
issue for the court, this is not an issue for this witness.  
He can tell you how he would classify them, but it would not  
be a question of if he's exempt as administrative that he'd  
get extra hours.....

12 MR. COVELL: Okay. Let.....

13 MS. ZOBEL: .....which is I think where you  
were going.

15 MR. COVELL: Let's finish this colloquy here.  
16 So then APC is not taking the position that he was exempt  
under any supervisory or other category?

18 MS. ZOBEL: That's correct. And that will be  
the subject of a motion that we're going to bring, and if it  
20 if you want to do a fall-back position, or we may even do a  
fall-back position, that he was supervisory. But it's for the  
court to make that determination.

23 MR. COVELL: Well, wait a minute, wait a  
minute. At one point during discovery I asked.....

25 MS. ZOBEL: And I told you that it was  
administrative or supervisory.

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1 MR. COVELL: I think I lost.....

2 MS. ZOBEL: I think it was a phone  
conversation we had.

4 MR. COVELL: Well, I think in the discovery I  
have re -- well, I know in discovery I have responses  
saying.....

7 MS. ZOBEL: Uh-huh.

8 MR. COVELL: .....he's under all the  
categories, okay?

10 MS. ZOBEL: That was -- that may have been  
discovery.

12 MR. COVELL: Okay. So, you know, to me that's  
the -- that over-the-phone conversation, that's the same piece  
of paper, that's the position, A, B, C.

15 MS. ZOBEL: Okay.

16 MR. COVELL: If you're telling me now -- are  
you telling me now it's solely administrative, or it's  
administrative and supervisory, or administrative or  
supervisory? Or what are you telling me now?

20 MS. ZOBEL: Why don't you wait for my motion.

21 MR. COVELL: Because I'm asking the man the  
question during the depositions, and you're objecting on the  
basis that I'm.....

24 MS. ZOBEL: Well, I -- let's.....

25 MR. COVELL: .....using the other category.

MS. ZOBEL: Let's go off the record for a

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second.

2 MR. COVELL: Okay.

3 (Off record)

4 (On record)

5 COURT REPORTER: We're back on record at 1:05.

6 MR. COVELL: We've had an off-the record  
discussion here, and APC has clarified their position as to  
their assertion as to the safety supervisor's position  
exemption, and their position is that either (a) it is exempt  
as an administrative position, or (b) that if it's not exempt  
as an administrative position, it's exempt as a supervisory  
position.

13 MS. ZOBEL: That's correct.

14 MR. COVELL: Okay. All right. So that's what  
we've said and that's.....

16 MS. ZOBEL: And that's where we stand.

17 MR. COVELL: That's where we stand.

18 MS. ZOBEL: That is correct.

19 MR. COVELL: Okay. And furthermore it -- Ms.  
Zobel is objecting to this ques -- or this line of questions  
and the court may rule on this at a latter date.

22 MS. ZOBEL: That's correct.

23 MR. COVELL: Okay.

24 MS. ZOBEL: And it's a standing objection so I  
don't interrupt you.

MR. COVELL: I -- that's fine with me. Thank

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you. Okay.

Q (By Mr. Covell) So in regard to the safety supervisor  
position, if the safety supervisor worked hours  
routinely in excess of their regular shift, wouldn't  
it seem that this directs APC to pay the safety  
supervisor for all hours worked?

A If we had determined at the time that it was  
supervisory, and I was aware of this letter, yes, but  
I did not feel that -- I felt the position at the time  
met the exemption, and was not entitled to all hours  
worked or overtime.

Q Okay. So with this information, would that answer  
change then, if I understood what you told me in your  
answer?

A No.

Q Okay. And.....

A Not from my personal position, no.

Q Okay. And why is that?

A The -- just as my position as the HSE manager I  
believe was clearly exempt, because of the routine  
step-up into that role with same functionality, and  
the administrative direction in the department that  
went on, and the amount of time spent administrating  
versus routine task working, that that position,  
unlike Fort Greeley, would be an exempt role.

Q Did the safety supervisor supervise or did the safety

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1 supervisor administer?

A You'll have to give me your definition of supervise  
2 versus administer.

Q Well, the definition of supervi -- or administrative  
3 is in the regulations you talked about, which you're  
4 familiar with?

A That's correct.

Q Okay. So are you saying that the safety supervisor  
5 met the administrative test?

A I believe at the time that that position did meet --  
6 did meet the test.

Q All right. And are you familiar with the supervisory  
7 test?

A I haven't looked at them in the last few months, but I  
8 have looked at them in the past.

Q Okay. Let's look at the first page of Mr. Carr's  
9 letter there. Does that seem in that first indented  
10 paragraph referencing 8 AAC 15.910(14) seem to set out  
11 the supervisory test?

A This supervisory test as spelled out here with these  
12 embedded employees mainly getting their daily task  
13 direction from their, as we called them at the time,  
14 clients that they were assigned to. Even though they  
15 were internal APC personnel, we've referred to them as  
16 our clients from the safety department. Their daily  
17 direction was determined a lot by their activities and

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1 direction, so our functionality was less daily  
2 direction and more administration facilitation,  
3 scheduling, the HR functionality, department  
4 directions, implementation of policy and procedure.

Q Okay. Thank you for that answer. Does this seem to  
6 set out what the test for a supervisory employee would  
7 be? That is, an exempt supervisory employee?

8 MS. ZOBEL: To the extent you're asking for a  
legal conclusion, I object.

10 MR. COVELL: Thank you.

A1 So what you're asking me, just for clarification is  
12 the first.....

13 MR. COVELL: Let me withdraw the question.  
A4 .....the first indented paragraph?

Q5 (By Mr. Covell) Is this -- is this the test for a  
16 supervisory employee exemption?

A7 As I know of it, yes.

Q8 Okay. All right. All right. And then did the  
19 position of safety supervisor that Mr. Gilbert  
20 occupied meet this test for exemption?

A1 so for clarification, you're asking me if that  
22 position met the exemption per this test as  
23 supervisory?

Q4 Right.

A5 I -- I feel like it does not meet supervisory, that it  
meets administrative more than supervisory based on

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1 the context of this paragraph.

Q Okay. And which elements of this paragraph doesn't  
3 the safety supervisor position meet?

A The being employed solely for the purpose of regularly  
5 assigning the activities, directing activities of  
6 other employees. So -- and the regularly assigning,  
7 that regularly assigning component is more of a  
8 functionality that took place at the embedded site.

Q Okay. Okay. And then -- let's see. And then would  
10 you say the safety supervisor was responsible for  
11 results of the work performed of other employees? I  
12 guess would you -- okay. Would you say that's so or  
13 not, the safety supervisor is responsible for the  
14 results of the work performed by other employees?

A Not directly. The specialists were more responsible  
16 for their performance at their embedded location than  
17 transferred to supervisor.

Q Okay. So if the specialist was having a product -- or  
19 a work product problem, you'd go talk to the  
20 specialist and not Mr. Gilbert and say -- is that  
21 fair?

A No, John or I both may talk to that person. The  
23 supervisor or the manager may speak to that person on  
24 performance, but as I read -- understand, this is to  
25 be more of an accountability perspective, that the  
supervisor would be accountable for the performance of

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1 his employees working under him.

Q Okay. And it's -- am I correct in understanding that  
3 you never did an analysis of any other positions  
4 besides Fort Greeley for APC or otherwise that  
5 entailed this -- the issue of whether or not an  
6 individual would get paid for, quote, all hours  
7 worked, unquote?

A That's correct.

Q Okay. All right. There are numerous people in the  
10 safety specialist and supervisor position, and  
11 numerous people have gone through those jobs. Do you  
12 think as a whole that they would agree or disagree  
13 with the proposition that largely the safety  
14 supervisor did the same work as the safety specialist?  
A5 I can't draw that conclusion on the whole. I can only  
16 speak to discussions with one or two employees about  
17 their perception of the position.

Q8 Okay. And why don't you tell me about those one or  
19 two -- name the employees and tell me about the  
20 discussions?

A1 I spoke with Robert Carrier and Tom Mannix who were  
22 both specialists at the time, and continue to be  
23 specialists at Kuparuk, and asked them what their  
24 perception was of the supervisor position in meeting  
25 the activities that I felt made it exempt, and then  
their -- and their response to me was that they did

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1 see that position as a position of authority with  
2 administrative responsibilities, and it seemed to meet  
3 the intent of what I presumed their perception would  
4 be, to make it an exempt position.

5 Okay. But coming back to the question, would whether  
6 or not -- coming back to the question, would they  
7 agree or disagree with the proposition that the safety  
8 supervisor largely did what a safety specialist did  
9 and vice versa?

10 MS. ZOBEL: You're asking him to tell you what  
11 other people would think? If so, you're asking for  
12 speculation.

13 MR. COVELL: Well, I think he just partially  
14 answered the question as to two individuals.

15 MS. ZOBEL: Well, two individuals that he  
16 talked to about whether it was -- whether it was exempt or  
17 not.

18 A Correct.

19 MS. ZOBEL: You're.....

20 MR. COVELL: Well, I'm -- and in analyzing  
21 whether it's exempt, part of the analysis is whether or  
22 not.....

23 MS. ZOBEL: If.....

24 MR. COVELL: .....you do the same job or not.

25 MS. ZOBEL: If you're asking whether these two  
people believed believe that they did the same job, then he

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has a basis for answering. If you're asking for all the people, then he has -- it lacks foundation.

3 MR. COVELL: Well, I asked for all the people,  
4 and he told me he couldn't answer as to most of them, but as  
5 to two he could.

6 MS. ZOBEL: Okay. So is this question.....

7 MR. COVELL: And he was proceeding.....

8 MS. ZOBEL: .....as to two or is this as to  
9 all?

10 MR. COVELL: I -- and this question is in  
11 clarification of the last question or two.

12 MS. ZOBEL: All right.

13 MR. COVELL: Okay. It's.....

14 Okay. In regards to the two people I spoke with.....

15 (By Mr. Covell) Right.

16 .....their perception was that the position did not do  
17 safety specialist work as a routine function.

18 Okay. Okay. As far as keeping records of hours that  
19 Mr. Gilbert may have worked -- oh we don't need to do  
20 that. Never mind.

21 MR. COVELL: Withdraw that.

22 You didn't -- you did look at those pay records,  
23 right?

24 MS. ZOBEL: No, you've not shown him.....

25 MR. COVELL: Okay.

MS. ZOBEL: .....the pay records.

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1 MR. COVELL: All right.

Q (By Mr. Covell) I'd represent to you in discovery we  
3 have pay records for Mr. Gilbert. Some have indicated  
4 consistently 10 hours a day and some indicate one day  
5 worked. Are you aware of any other records that might  
6 indicate hours worked by Mr. Gilbert different than  
7 those, or would indicate things different than those?

A Not at this time, no.

Q Okay. Mr. Gilbert submitted to the company what might  
10 be called a daily log which is sort of a day planner  
11 and has some notes about what he did each day and then  
12 has a notation of hours, 12, 13, 14 and a half. Do  
13 you have any informa -- assuming he represents that  
14 those are the hours he worked those days, do you have  
15 any information that would dispute that -- whether or  
16 not he actually worked those hours?

A No.

Q Okay. And is it true that when he worked as both  
19 safety specialist and safety supervisor, that is, the  
20 hours he worked varied?

A That is true.

22 MR. COVELL: Let's go off for just a minutes  
here.

24 (Off record)

25 (On record)

COURT REPORTER: We back on record at 1:20.

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Q (By Mr. Covell) Mr. Smith, I've handed you a copy of  
2 APC's response of February 17, '06 discovery request,  
3 and I'd direct you to the second page there under  
4 response. And there's a list of plaintiff's job  
5 duties. We talked about the plaintiff's job duties,  
6 and I just want to go through these and see if there  
7 are consistencies with what we already talked about.  
8 I think we already talked about developed, wrote and  
9 implemented HSE department procedures. You agree he  
10 did that, right?

A1 I agree.

Q2 And then supervision and general oversight of the  
13 safety specialists to determine work needs and took  
14 steps necessary to facilitate department  
15 functionality. Do you maintain that's something Mr.  
16 Gilbert did as safety supervisor?

A7 I think that's generally correct.

Q8 Okay. Briefly, I don't want to go on this a long  
19 time, what does facilitate department functionality  
20 mean, if you know?

A1 Yeah, that would be to, for example -- one example,  
22 receive say a regulatory change or a policy change  
23 from Conoco that would require implementation into our  
24 practices, so we would interpret, place into  
25 department functionality and institute those changes.  
Q And that would be sort of part of the first one, too,

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1 then, changing the book about it?

A It could be. The department functionality could maybe  
3 be better described by shift scheduling, making sure  
4 we had coverage at all locations.

Q Okay. And the next one, interpret testing results?

A That's correct.

Q Okay. Devise and implemented changes to department on  
8 an on-going basis and as needed. Do you agreement  
9 with that as a duty? And I'll let you know right now  
10 the next question I'm going to ask you is what does  
11 that mean.

A2 Yeah. I think that's maybe a repeat of some of the  
13 prior statements. So, you know, implemented changes  
14 could be those procedural changes due to regulatory  
15 changes or policy changes. Changes might also include  
16 maybe we have night shift activities that are sporadic  
17 and meet coverage, you know, changes implemented,  
18 devised, who's going to cover the night shift, and  
19 when.

Q0 All right. Is it right that sort of your day, the  
21 hope (ph) of your day was 12 hours and there wasn't a  
22 night shift, but oftentimes your department had to  
23 cover nighttime duties?

A4 We would typically only do that with additional  
25 personnel or changing of work hours. So if a  
specialist needed to cover night, he may work noon to

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1 midnight and split the shifts, or be transferred to  
2 the night shift.

Q All right. But it's not like the police station,  
4 there's no midnight shift in.....

A That's correct.

Q .....safety, right? Okay. All right. Hiring input  
7 and veto rights. We already talked about that. I  
8 think we covered that ground as to what you thought he  
9 could or couldn't do in that regard, right?

A10 I don't think entirely. I think you asked me if he  
11 performed any disciplinary action or had hire and fire  
12 authority correct?

Q13 Right.

A14 And in -- as I look to that position, when we were  
15 making changes to a department, when -- and the  
16 organization when through a metamorphosis quite a bit  
17 during John's tenure, that that position was -- was  
18 consulted with on who was our top performers as we  
19 were reducing personnel. You know, who were the  
20 keepers and who were the guys who were at the bottom  
21 of performance level.

Q22 Okay. All right. And we talked about -- well, did he  
23 ever discipline anybody that you know of?

A24 Not in my recollection was there any disciplinary  
25 action handed out from that position.

Q Okay. All right.

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A I'd like to clarify one thing.

Q Sure.

A That in my whole tenure there, I only took one disciplinary action in the whole time, so it wasn't very frequent.

Q Okay. Okay. Approval of timesheets and other employee/management functions. Did the safety supervisor approve timesheets?

A Yes.

Q And was there a line on them for him to sign off on them or --

A There was.

Q Okay. All right.

14 (Pause)

Q All right. That's all I should have on that one.

16 MS. ZOBEL: Do you want your copy back?

17 MR. COVELL: Sure. Thanks.

Q (By Mr. Covell) Are you aware that the company's asserting a good faith defense in this case?

A Yes.

Q Okay. Are you aware of any paperwork that the company intends to rely upon in asserting its good faith defense?

A No.

Q Okay.

MR. COVELL: Let's go off record.

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1 (Off record)

2 (On record)

3 COURT REPORTER: We're back on record at 1:28.

4 MR. COVELL: That's all I have. Thank you.

5 MS. ZOBEL: And I'm just looking at my notes.

6 Probably go off record for a moment.

7 COURT REPORTER: All right.

8 (Off record)

9 (On record)

10 COURT REPORTER: We're back on record at 1:28.

11 MS. ZOBEL: I have no questions.

12 MR. COVELL: No questions. I can't.

13 MS. ZOBEL: No questions.

14 MR. COVELL: Yeah.

15 COURT REPORTER: All right. This concludes  
16 the deposition at 1:29.

17 (Off record)

18 (On record)

19 COURT REPORTER: We're back on record at 1:30.

20 (By Mr. Covell) I'm handing you B-2.....

21 MR. COVELL: .....which I think we'll go ahead  
22 and make whatever subsequent S it will be here.

23 COURT REPORTER: S-2.

24 MR. COVELL: S-2.

25 Q Are you familiar with that document?

A Yes, I am.

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Q All right. And that's a job description for safety  
2 supervisor, is that right?

A That's correct.

Q Do you -- where did it come from?

A This description was in place when I arrived, and it  
6 was the position being held by Ron Kirk.

Q Okay.

A And I reviewed the description prior to making a  
9 decision to place an alternate opposite of Ron Kirk.

Q Okay. And.....

A And I felt that generally it was correct in its  
12 content.

Q Okay. And was that in a file folder on the Slope?

A There was a list of job descriptions that were there  
15 in a binder, along with ergonomic assessments.

Q Okay. So do you know when that was generated or who  
17 generated, its history or anything?

A I do not know the history or the date of generation.

Q Okay. And you just came across it when you started up  
20 there more or less?

A Yeah, I went looking for the -- the company's -- I was  
22 new to the company, I went looking for their job  
23 description for that position, and that the -- this is  
24 what I was -- located, and at that time, you know, it  
25 was -- is in the right context. Now, this document  
has been revised after that time frame. And in fact

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1           it shows the -- one of the updates, like the Phillips  
2           Alaska I think was a terminology change, because prior  
3           it was listed in there as Arco Alaska. And so we made  
4           a couple terminologies. But the job description, the  
5           duties entailed have -- are substantially, exact same  
6           as when I reviewed that in 2002.

7           Okay. All right. Thank you.

8                     MR. COVELL: I'd like.....

9                     MS. ZOBEL: Don't give it to him.

10                    MR. COVELL: Yeah, make that an exhibit.

11           That's all I have.

12                    COURT REPORTER: Are we off record? Is this  
13           the conclusion?

14                    MS. ZOBEL: Yes.

15                    COURT REPORTER: Okay.

16                    MR. COVELL: Yeah.

17                    COURT REPORTER: 1:32 We're off record

18           (Off record)

19   (Deposition Exhibit S-2 marked)

20   \* \* \* END OF PROCEEDINGS \* \* \*

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S I G N A T U R E

1  
STATE OF ALASKA )  
2 ) ss.  
THIRD JUDICIAL DISTRICT )  
3

4 I, **DOUGLAS L. SMITH**, have read the foregoing  
deposition and have made corrections thereto. Any and all  
changes, explanations, deletions and/or additions to my  
testimony may be found on the correction sheet(s) enclosed  
with this transcript.

9 DOUGLAS L. SMITH

10  
STATE OF ALASKA )  
11 ) ss.  
THIRD JUDICIAL DISTRICT )  
12

13 THIS IS TO CERTIFY that on this \_\_\_\_\_ day of  
14 \_\_\_\_\_ 2006, before me appeared **DOUGLAS L. SMITH**,  
to me known and known to be the person named in and who  
executed the foregoing instrument, and acknowledge voluntarily  
signing and sealing the same.

18  
19 Notary Public in and for  
State of Alaska, at Anchorage  
20 My Commission Expires: \_\_\_\_\_  
21  
22  
23  
24  
25

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# C E R T I F I C A T E

I, Jerri Young, Notary Public in and for the State of Alaska and Reporter with Metro Court Reporting, do hereby certify:

THAT the annexed and foregoing Deposition of DOUGLAS L. SMITH was taken before Cheri Tabor on the 1st day of June, 2006, commencing at the hour of 11:30 a.m., at the offices of DeLisio moran Geraghty & Zobel, 943 West Sixth Avenue, Anchorage, Alaska, pursuant to Notice to take said Deposition of said Witness on behalf of the Plaintiff;

THAT the above-named Witness before examination, was duly sworn to testify to the truth, the whole truth, and nothing but the truth;

THAT this Deposition, as heretofore annexed, is a true

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and correct transcription of the testimony of said Witness  
taken by Cheri Tabor and hereafter transcribed by Meredith  
Downing;

2

THAT the original of the Deposition transcript will be  
lodged in a sealed envelope with the attorney requesting  
transcription of same, as required by Civil Rule 30(f)(1)  
Amended, that attorney being:

5

MR. KENNETH COVELL, Attorney at Law, 712 Eighth  
Avenue, Fairbanks, Alaska;

6

THAT I am not a relative, employee or attorney of any  
of the parties, nor am I financially interested in this  
action.

8

IN WITNESS WHEREOF, I have hereunto set my hand and  
affixed my seal this 3rd day of July 2006.

10

11

\_\_\_\_\_  
Jerri Young  
Notary Public in and for Alaska  
My Commission Expires: 11-03-07

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